

REMARKS

This Amendment is submitted preliminary to the issuance of an Office Action in the present application and in response to the Official Action of July 23, 2008.

In the last Office Action, claims 42 and 43 were pending. New claim 44 is submitted herewith. No claims were cancelled. No fee is due.

Claim 43 stands rejected under 35 U.S.C. § 102(a) as anticipated by Schirmbeck et al. (June 2001) J. Mol Med., Vol 79, 343-350 ("Schirmbeck").

Claim 42 stands rejected under 35 U.S.C. § 103(a) as being rendered obvious by Schirmbeck in view of Makkerh et al. (1996) Current Biology, Vol. 6(8), 1025-1027 ("Makkerh").

Claims 42 and 43 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite regarding the method steps.

REJECTION OF CLAIMS 42 AND 43 UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY SCHIRMBECK

The rejection under 35 U.S.C. 102(a) is respectfully traversed. The Schirmbeck reference has an effective date as a reference as a publication of May 3, 2001.

Applicant submits herewith a declaration by the inventors under Patent Rule 131, in which the inventors submit lab reports and protocols on experiments that bear dates earlier than the date of the reference.

Applicant contends that the submitted evidence shows that the inventors had conceived and reduced to practice the invention prior to the date of the Schirmbeck reference.

The Examiner's rejection is based on anticipation by Schirmbeck. In view of the inventor declarations, the Schirmbeck reference is believed to be overcome.

Accordingly, withdrawal of the rejection of claims 42 and 43 under 35 USC §102 (a) is respectfully requested.

**REJECTION OF CLAIM 42 UNDER 35 U.S.C. §103(a) AS BEING
UNPATENTABLE OVER SCHIRMBECK IN VIEW OF MAKKERH**

The Examiner has rejected the claims as obvious over Schirmbeck in view of Makkerh.

In view of the inventors declaration under Rule 131, the Schirmbeck reference is overcome. The Makkerh reference was cited as the secondary reference based on Schirmbeck. Since the Schirmbeck reference is overcome, the Makkerh reference cannot render claim 42 obvious.

**REJECTION OF CLAIMS 42 AND 43 UNDER 35 U.S.C. §112, SECOND
PARAGRAPH**

Applicant amended claims 42 and 43 to clearly state the method steps. Thus, the first step is providing a vaccine and the second step recites that the vaccine is administered in transdermally into the subject. It is believed that the claims as now presented are definite.

Withdrawal of the rejection of claim 13 under 35 USC §112, second paragraph is thus respectfully requested.

PRIORITY

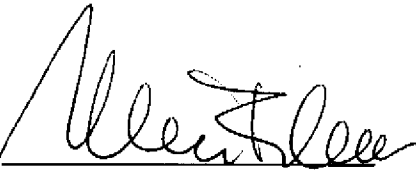
It is noted that priority document DE 101 48 697.9 is not yet on file. To perfect the claim of priority, applicant has obtained a certified copy of the priority document and submits the document by separate First Class postal service.

CONCLUSION

In view of the foregoing discussion, each of the presently pending claims in this application is considered patentably differentiated over the prior art of record and believed to be in immediate conditions for allowance. Reconsideration and allowance of the present application are thus respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 
Ursula B. Day
Attorney for Applicant
Reg. No. 47,296

Date: January 23, 2009
708 Third Avenue
Suite 1501
New York, N.Y. 10017
(212) 244-5500
UBD:be